IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

MFA.No. 1430 of 1997()

OPMV.922/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD
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APPELLANT - PETITIONER:

T.A. MOHAMMED HUSSAIN AGED 36 YEARS, S/O.ABDULRAHIMAN, RESIDING AT WEST HOUSE, TALANGARA WEST KASARGOD, NOW RESIDING AT POST BOX NO.51365, DAIR DUBAI, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER P.A. ABOOBACKER, S/O. ABDULRAHIMAN RESIDING AT WEST HOUSE TALANGARA VILLAGE, KASARGOD TALANGARA WEST, KASARGOD TALUK.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS - RESPONDENTS:
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1. **T. CHANDRAN, S/O. KANNAN, MOOLA HOUSE, IRIYANNI POST MULIYAR, KARADKA VILLAGE, KASARGOD TALUK.**

2. **B.C. MADHUSOODANAN, S/O. C. KUNHIRMAN, BEPU HOUSE, IRIYANNI POST, MULIYAR KASARGOD TALUK.**

3. **NATIONAL INSURANCE COMPANY LTD., M.G. ROAD, KASARGOD BRANCH, KASARGOD.**

BY ADV. SRI.P.JAYASANKAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. 1430 OF 1997

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Dated this the 4th day of September, 2007

J U D G M E N T

Claimant in O.P(MV) No. 922 of 1996 on the file of the Motor Accidents Claims Tribunal, Kasargod is the appellant. Appeal is filed complaining that the quantum of damages awarded is inadequate.

2. The appellant filed the Original Petition claiming compensation against the respondents. It was alleged that on 4.9.1996 at about 8.00 a.m. a stage carriage bus bearing Reg. No.KL/14-6274 driven by the first respondent in a rash or negligent manner went off the road and hit against the building of the petitioner causing damages to the building to the tune of Rs.50,000/-. According to the petitioner the accident occurred due to the rash or negligent driving of the bus by the driver and hence he is entitled to compensation.

3. Tribunal found that the accident occurred due to the rash or negligent driving of the bus by the driver. Tribunal also found that the building owned by the petitioner sustained damages. Tribunal further found that the evidence

adduced by the petitioner was not sufficient to quantify the actual damages sustained by the petitioner. Tribunal found fault with the petitioner in not getting the assistance of an Advocate Commissioner for quantifying the damages sustained by the petitioner. However, the Tribunal awarded a sum of Rs.5,000/- as damages. Dissatisfied with the quantum of compensation awarded by the Tribunal, petitioner has filed this appeal. The only question arising for consideration is whether the appellant is entitled to get any additional compensation.

4. Learned counsel for the appellant has strenuously argued before me that the damages were caused to a shop building which was occupied by the tenant and the appellant cannot be found fault with for not taking out a commission. It is argued that since damages were caused to a shop room and repairs were to be effected immediately, he got the damages assessed with the help of a competent Engineer who assessed the damages at Rs.40,000/-. It is argued that the Tribunal did not consider the evidentiary value of the report at all. It is argued that in spite of registered notice, the insurance

company did not depute any Surveyor to assess the damages and hence the appellant availed of the service of a retired Engineer, who prepared Exhibit PA5 report. It is argued that a comparison of Exhibit A5 report with the scene mahazar would show that Exhibit A5 report prepared by the Engineer was true and correct and hence the Tribunal ought to have awarded the damages quantified by the Engineer.

5. Appellant had issued Exhibit A3 notice calling upon the Insurer to depute a Surveyor to assess the damages sustained to the building but the Insurer did not depute any Surveyor. Appellant is relying on Exhibit A5 report prepared by the retired Engineer, who was examined as P.W.1. Learned counsel for the appellant has argued that P.W.1 has prepared the report truly and correctly after inspecting the site and verifying the damages caused to the building. P.W.1 had calculated the value of shutters of the shop room made up of wooden planks at the rate of Rs.5,000/-. He had fixed the value of a small stool at Rs.1,000/- and value of three boards at Rs.4,500/-. P.W.1 has calculated Rs.300/- per Sq.ft. for construction of the front portion of the damaged building. But

he has not stated the age of the building. From the report it is not clear as to what was the date taken for fixing the cost of construction. According to P.W.1 the age of the building was 10 years approximately. The appellant has not adduced any evidence to prove the age of the building. No depreciation was made by P.W.1. So it is not possible to accept the report. Barring the report, there is no other evidence. So the Tribunal was justified in granting Rs.5,000/- as compensation for the damages sustained by the appellant. There is no scope for interference with the award passed by the Tribunal. The appeal is without any merit and the same is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO.1430 OF 1997

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J U D G M E N T

4TH SEPTEMBER, 2007